IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 343 OF 2006

Smt. Ramila S. Thakkar (Karia) ....Petitioner.

V/s

The State of Maharashtra & Ors. .... Respondents.

Ms. Deepti B. Mistry for the petitioner.

Mr. Y.S. Shinde, APP for the State.

Mr. R.G. Ketkar for Respondent Nos. 2 and 3.

CORAM: V.M. KANADE, J.
DATE : 10th August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner, the learned APP for the State and the learned Counsel appearing on behalf of Respondent Nos. 2 and 3.

2. The Petitioner takes exception to the order passed by the Sessions Judge, Kalyan, in Criminal Misc. Application No. 13 of 2004 dated 14/12/2005 whereby the application for condonation of delay which was filed by the applicant in filing criminal revision application was dismissed.

3. Brief facts are that the Petitioner is the original complainant who had filed complaint against Respondent Nos. 2 and 3 who are practicing lawyers and against two

other persons who were his erstwhile partners. The trial court did not issue process against Respondent Nos. 2 and 3. Against the said order, the Petitioner filed revision application in this Court. This Court, however, by order dated 14/11/2003 granted liberty to the Petitioner to approach the Sessions Court. It was further directed that if an application is filed within four weeks from the date of the order, the period of pendency of revision application would be taken into consideration. It is the case of the Petitioner that he came to know about the order passed by the High Court only on 06/01/2004 and, thereafter, a revision application was filed in the Sessions Court. The Sessions court rejected the revision application on the ground that there is gross delay in filing revision application. The Petitioner, being aggrieved by the aforesaid order, has filed this Petition under Article 227 of the Constitution of India.

4. It is submitted by the learned Counsel appearing on behalf of the Petitioner that the Sessions Court had erred in holding that there is a delay of 3 years and 3 months. It is submitted that the order was passed by the High Court in Revision Application No.365 of 2000 on 14/11/2003 and the Sessions Court ought to have calculated the delay from the date of the order passed by the High Court. She submitted that, therefore, the impugned order was liable to be set aside.

5. The learned Counsel appearing on behalf of Respondent

Nos. 2 and 3 vehemently opposed the submission made by the learned Counsel appearing on behalf of the Petitioner. He submitted that a suit was filed by one Ahsok Vinayak Jog for possession of the premises situated at Village Kalyan, Bhiwandi Road, which was let out to the partnership firm viz M/s Chhotalal Girdharlal & Sons and its partners. Since Defendant No.2 and Defendant No.4 expired during the pendency of the suit, plaintiffs filed an application for bringing their legal heirs on record. One Mr. A.L. Kumar was appointed by the Petitioner as her advocate. Respondent Nos. 2 and 3 filed appearance on behalf of the Petitioner on instructions given by Defendant No.3 - Krishnalal. It is the case of Respondent Nos. 2 and 3 that they did not know that the Petitioner had already filed vakalatnama of advocate Mr. A.L. Kumar on her behalf. On 25/4/2000, Petitioner wrote a letter to Respondent Nos. 2 and 3, alleging that her signature on the vakalatnama was forged. In view of this letter, on 28/4/2000, Respondent Nos.2 and 3 filed an application seeking permission to withdraw their appearance from the suit and, accordingly, trial court, on the same day, allowed the withdrawal of their appearance and the allegations made by the Petitioner herein were denied by Respondent Nos. 2 and 3 by sending their reply dated 29/4/2000. On 6/8/2000, the Petitioner filed a criminal complaint against the accused. The Judicial Magistrate, First Class, Kalyan, however, issued process against accused Nos. 3 and 4. In the meantime, on 24/4/2001, plaintiff filed purshis, seeking permission to withdraw the suit

unconditionally. The complaint filed by the Petitioner against Respondent Nos. 2 and 3 in the Bar Council of Maharashtra & Goa was dismissed.

6. It is submitted by the learned Counsel for Respondent Nos. 2 and 3 that under the facts and circumstances of this case, he is vehemently opposing the application for condonation of delay. It is submitted that the Petitioner has abused the process of law and has falsely prosecuted Respondent Nos. 2 and 3 who had signed the vakalatnama which was allegedly signed by the Petitioner herein and that immediately after a letter was sent by the Petitioner alleging that his signature was forged, Respondent Nos. 2 and 3 had promptly withdrawn their appearance. He submitted that, even in this Court, when the criminal revision application filed by the Petitioner was dismissed, application for restoration was made behind their back. He submitted that, even otherwise, no explanation had been given by the Petitioner as to why and how the delay is caused in filing the application after a lapse of almost one year from the date of the order passed by this court. He submitted that, even in this Petition, sufficient cause has not been shown regarding the delay caused in filing the said application. He submitted that Respondent Nos. 2 and 3 are practicing for last 40 years and as a result of the delay which is caused, a substantive right has accrued in favour of Respondent Nos. 2 and 3 to oppose the condonation of delay.

7. Ordinarily, this Court would have condoned the delay which is caused in filing the revision application. The law in this regard is quite well settled and if sufficient cause is shown for the delay which has been caused in filing the application, the Court has a discretion of condoning the delay. However, if sufficient cause is not shown and the facts on record disclose that if delay is condoned, it would lead to an abuse of process of the court then, in such cases, the delay need not be condoned. In my view, facts and circumstances of this case clearly disclose that the Petitioner has abused the process of the court by filing an application in the Sessions Court without there being any sufficient cause.

8. Under the circumstances, I do not see any reason to interfere with the impugned order which is passed by the Sessions Court in rejecting the application for condonation of delay. No case is made out for interfering with the impugned order while exercising writ jurisdiction of this Court. Writ Petition is accordingly dismissed.

(V.M. KANADE, J.)